

1 The opinion in support of the decision being entered today was *not* written
2 for publication in and is *not* binding precedent of the Board.

3
4 UNITED STATES PATENT AND TRADEMARK OFFICE

5
6
7 BEFORE THE BOARD OF PATENT APPEALS
8 AND INTERFERENCES

9
10
11 *Ex parte* KEVIN O'ROURKE

12
13
14 Appeal 2007-1277
15 Application 09/939,899
16 Technology Center 2100

17
18
19 Decided: May 22, 2007

20
21
22 Before JENNIFER D. BAHR, LINDA E. HORNER, and ANTON W. FETTING,
23 *Administrative Patent Judges.*

24 FETTING, *Administrative Patent Judge.*

25 DECISION ON APPEAL

26
27
28 STATEMENT OF CASE

29 This appeal from the Examiner's rejection of claims 1-24, the only claims
30 pending in this application, arises under 35 U.S.C. § 134. We have jurisdiction
31 over the appeal pursuant to 35 U.S.C. § 6.

32
33 We AFFIRM-IN-PART.

1 The Appellant invented a way to facilitate the processing and navigation of
2 image menus and data in support of the location and access of desired patient
3 record data by a user. The system initiates display of an image including a plurality
4 of links to a corresponding plurality of individual patients, display of a patient
5 record content index image including a plurality of links to a corresponding
6 plurality of items of patient record information in response to user selection of a
7 link to one of the plurality of individual patients, and display of an image including
8 information comprising a portion of a patient record in response to user selection
9 of a link to one of the plurality of items of patient record information
10 (Specification 2).

11 An understanding of the invention can be derived from a reading of the
12 independent claim 1, which is reproduced below.

13 1. A method for providing a user interface for use by a portable
14 processing device for accessing and navigating patient record
15 information, comprising the activities of:
16 receiving user identification information for use in authorizing user
17 operation of said portable processing device;
18 initiating display of an image including a plurality of links to a
19 corresponding plurality of individual patients;
20 acquiring data representing a patient record content index, said
21 content index representative acquired data being dynamically derived,
22 by processing information comprising an existing particular patient
23 record, in response to a user command from said portable processing
24 device to access said particular patient record;
25 initiating display of a patient record content index including a
26 plurality of links to a corresponding plurality of items of patient
27 record information image using said acquired data in response to user
28 selection of a link to one of said plurality of individual patients; and

1 initiating display of an image including information comprising a
2 portion of a patient record in response to user selection of a link to one
3 of said plurality of items of patient record information .
4

5 This appeal arises from the Examiner's Final Rejection, mailed October 7,
6 2005. The Appellant filed an Appeal Brief in support of the appeal on June 20,
7 2006, and the Examiner mailed an Examiner's Answer to the Appeal Brief on
8 October 19, 2006. A Reply Brief was filed on November 3, 2006.

9 PRIOR ART

10 The prior art references of record relied upon by the Examiner in rejecting the
11 appealed claims are:

12	Myers	US 5,832,450	Nov. 3, 1998
13	de la Huerga	US 5,903,889	May 11, 1999
14	Evans	US 5,924,074	Jul. 13, 1999
15	Bessette	US 6,263,330 B1	Jul. 17, 2001
16			(May 29, 1998)
17	Blewett	US 6,327,589 B1	Dec. 4, 2001
18			(Jun. 24, 1998)

19 Screen dumps of Internet Explorer 6.0 (March 26, 2001, pp. 1-7) (Explorer)

20 Microsoft Excel Help (1999, p. 1) (Excel)

21 In addition, we make of record the following art:

22 Tips Internet Explorer: August 1999¹, TipWorld, August, 1999

¹ <http://cc1.jura.uni-sb.de/cc1-support/Tips/TipWorld/MSIE/1999/IEexplorer-Tips-9908.htm>

REJECTIONS

Claims 6 and 23 stand rejected under 35 U.S.C. § 112, second paragraph, as failing to particularly point out and distinctly claim the invention.

Claims 1, 2, 5, 9, 13, 14, 16, and 18 stand rejected under 35 U.S.C. § 102(b) as anticipated by Evans.

Claims 7 and 8 stand rejected under 35 U.S.C. § 102(b) as anticipated by Evans, or, in the alternative, under 35 U.S.C. § 103(a) as obvious over Evans and Excel.

Claims 3, 4, 10, 11, 19, and 21 stand rejected under 35 U.S.C. § 103(a) as obvious over Evans and Blewett.

Claim 6 stands rejected under 35 U.S.C. § 103(a) as obvious over Evans and Myers.

Claim 12 stands rejected under 35 U.S.C. § 103(a) as obvious over Evans and Blewett², or, in the alternative, over Evans, Blewett, and Explorer.

Claim 15 stands rejected under 35 U.S.C. § 103(a) as obvious over Evans, Bessette and Explorer.

Claim 17 stands rejected under 35 U.S.C. § 103(a) as obvious over Evans and Huerga.

² The Examiner refers to Huerga rather than Blewett in the statement of the rejection (Answer 12). But the Examiner does not apply Huerga, merely stating that Huerga was applied to the parent claim 10 (Answer 12). The rejection of claim 10 was in fact over Evans and Blewett (Answer 9-10), and therefore we treat this rejection as based on Blewett instead of Huerga.

1 Claim 20 stands rejected under 35 U.S.C. § 103(a) as obvious over Evans,
2 Blewett³, and Bessette.

3 Claims 22 and 23 stand rejected under 35 U.S.C. § 102(b) as anticipated by
4 Evans, or, in the alternative, under 35 U.S.C. § 103(a) as obvious over Evans and
5 Explorer.

6 Claim 24 stands rejected under 35 U.S.C. § 103(a) as obvious over Evans and
7 Explorer.

8 ISSUES

9 The issues pertinent to this appeal are

- 10 • Whether the rejection of claims 6 and 23 under 35 U.S.C. § 112, second
11 paragraph is in error (Br. 13).
 - 12 ○ Whether not using the plural of “said image icon,” which absent the
13 plural form lacks antecedent basis, is indefinite (Claim 6).
 - 14 ○ Whether the reference to a device as a data storage container is
15 indefinite (Claim 23).
- 16 • Whether the rejection of claims 1, 2, 5, 9, 13, 14, 16, and 18 under 35 U.S.C.
17 § 102(b) as anticipated by Evans is in error.
 - 18 ○ Whether Evans shows acquiring data representing a patient record
19 content index, said content index representative acquired data being

³ The Examiner refers to Huerga rather than Blewett in the statement of the rejection (Answer 16). But the Examiner does not apply Huerga, merely stating that Huerga was applied to the parent claim 19 (Answer 16). The rejection of claim 19 was in fact over Evans and Blewett (Answer 9-10), and therefore we treat this rejection as based on Blewett instead of Huerga.

1 dynamically derived, by processing information comprising an
2 existing particular patient record, in response to a user command from
3 said portable processing device to access said particular patient record
4 (Claims 1, 8, 9, and 18; Br. 14-17; Reply Br. 7-10).

5 ○ Whether Evans shows said processing of said information comprising
6 said existing particular patient record is performed by one of, (a) an
7 application located in a remote device and (b) an application in said
8 portable processing device (Claim 2; Br. 17-18).

9 ○ Whether Evans shows initiating display of an image including a
10 plurality of links to a corresponding plurality of lists of patients, and
11 wherein said step of initiating display of an image including a
12 plurality of links to a corresponding plurality of individual patients is
13 performed in response to user selection one of said plurality of links to
14 a corresponding plurality of lists of patients (Claim 5; Br. 18-19;
15 Reply Br. 10-11).

16 ○ Whether Evans shows initiating display of at least one of (a) a
17 reference range for said medical parameter and (b) a unit of measure
18 for said medical parameter in response to user selection of said
19 medical parameter label (Claims 13, 14, and 16; Br. 19-21; Reply Br.
20 11-13).

21 • Whether the rejection of claims 7 and 8 as anticipated by Evans, or, in the
22 alternative, under 35 U.S.C. § 103(a) as obvious over Evans and Excel is in
23 error.

- Whether the art applied shows or suggests maintaining a row element stationary upon horizontally scrolling an image screen display including other elements of said row (Claims 7 and 8; Br. 21-23; Reply Br. 14-15).
- Whether the rejection of claims 3, 4, 10, 11, 19, and 21 under 35 U.S.C. § 103(a) as obvious over Evans and Blewett is in error.
 - Whether the art applied shows or suggests deriving content index information from patient record information by parsing patient record information ancillary data to identify distinct patient record information sections (Claim 3; Br. 24-26; Reply Br. 16-18).
 - Whether the art applied shows or suggests said ancillary data comprises at least one of, (a) header data of said acquired patient record information, (b) descriptive data in a data field of said acquired patient record information, (c) identification data in a data field of said acquired patient record information, and (d) text data derived by parsing content of said acquired patient record information (Claim 4; Br. 26).
 - Whether the art applied shows or suggests dynamically generating a patient record content index by deriving content information from ancillary data associated with said acquired patient record information in response to a user command from said portable processing device to access said particular patient record (Claim 10; Br. 26-27; 18-20).
 - Whether the art applied shows or suggests said user command from said portable processing device to access said particular patient record

1 comprises user selection of a link to a particular patient (Claim 11; Br.
2 28).

3 ○ Whether the art applied shows or suggests deriving content index
4 information from information in an existing patient record by parsing
5 patient record information ancillary data to identify distinct patient
6 record information sections in response to a user command from a
7 portable processing device to access said particular patient record
8 (Claims 19 and 21; Br. 28-30; Reply Br. 20-21).

9 ● Whether the rejection of claim 6 under 35 U.S.C. § 103(a) as obvious over
10 Evans and Myers is in error.

11 ○ Whether the art applied shows or suggests initiating display of said
12 patient record content index image including a plurality of links to a
13 corresponding plurality of items of patient record information and a
14 plurality of image icons for display in a plurality of images, said
15 image icon supporting at least one of (a) initiating display of said
16 image including links to a plurality of lists of patients, (b) initiating
17 display of said image including a plurality of links to a corresponding
18 plurality of individual patients, and (c) initiating display of medical
19 record information for a next patient (Claim 6; Br. 30-32; Reply Br.
20 21-23).

21 ● Whether the rejection of claim 12 under 35 U.S.C. § 103(a) as obvious over
22 Evans, Blewett, or, in the alternative, over Evans, Blewett, and Explorer is in
23 error.

1 ○ Whether the art applied shows or suggests said item of said patient
2 medical record information is available for access on said portable
3 processing device when said portable processing device is offline
4 (Claim 12; Br. 32-34; Reply Br. 23-24).

5 ○ Whether the art applied shows or suggests initiating display of an
6 image including information comprising an item of patient medical
7 information in response to user selection of a link to one of said
8 plurality of items of patient medical record information (Claim 12; Br.
9 33-34; Reply Br. 23-24).

10 ● Whether the rejection of claim 15 under 35 U.S.C. § 103(a) as obvious over
11 Evans, Bessette and Explorer is in error.

12 ○ Whether the art applied shows or suggests said medical parameter
13 label is a URL link stored in said portable processing device (Claim
14 15; Br. 34; Reply Br. 24-26).

15 ○ Whether the art applied shows or suggests said at least one of, (a) a
16 reference range for said medical parameter and (b) a unit of measure
17 for said medical parameter, is acquired and displayed using said
18 medical parameter label URL (Claim 15; Br. 34-36; Reply Br. 24-26).

19 ● Whether the rejection of claim 17 under 35 U.S.C. § 103(a) as obvious over
20 Evans and Huerga is in error.

21 ○ Whether the art applied shows or suggests initiating generation of said
22 patient record content index image by deriving content information
23 from ancillary data associated with acquired patient record
24 information (Claim 17; Br. 36-38; Reply Br. 26-28).

- 1 • Whether the rejection of claim 20 under 35 U.S.C. § 103(a) as obvious over
2 Evans, Blewett, and Bessette is in error.
 - 3 ○ Whether the art applied shows or suggests said communicated patient
4 record information includes a medical parameter and including the
5 activity of, communicating to said portable processing device at least
6 one of, (a) a reference range for said medical parameter and (b) a unit
7 of measure for said medical parameter in response to receiving a
8 message addressed to a URL associated with a medical parameter
9 label (Claim 20; Br. 38-40; Reply Br. 28-29).
- 10 • Whether the rejection of claims 22 and 23 under 35 U.S.C. § 102(b) as
11 anticipated by Evans, or, in the alternative, under 35 U.S.C. § 103(a) as
12 obvious over Evans and Explorer is in error.
 - 13 ○ Whether the art applied shows or suggests acquiring data representing
14 said portion of said patient record in response to user selection of said
15 link (Claim 22; Br. 40-41; Reply Br. 29-30).
 - 16 ○ Whether the art applied shows or suggests said portion of said patient
17 record is available for access on said portable processing device when
18 said portable processing device is offline (Claims 22 and 23; Br. 41
19 Reply Br. 30).
 - 20 ○ Whether the art applied shows or suggests processing information
21 comprising an existing particular patient record that is performed in
22 response to download of particular patient record information to said
23 portable processing device and storage of said particular patient

1 record information in said portable processing device (Claim 23; Br.
2 41-42; Reply Br. 31).

- 3 • Whether the rejection of claim 24 under 35 U.S.C. § 103(a) as obvious over
4 Evans and Explorer is in error.
 - 5 ○ Whether the art applied shows or suggests acquiring data representing
6 said plurality of links to said corresponding plurality of items of
7 patient record information and storing said data representing said
8 plurality of links in said portable processing device (Claim 24; Br. 42-
9 44; Reply Br. 32-33).

10
11 **FACTS PERTINENT TO THE ISSUES**

12 The following Findings of Fact (FF) are pertinent to the above issues.

- 13 01. Claim 6 contains the phrase “a plurality of image icons for display in
14 a plurality of images, said image icon supporting...”
- 15 02. The Examiner rejected claim 6 as indefinite as to the phrase “said
16 image icon” in view of the antecedent plurality of image icons
17 (Answer 3).
- 18 03. Thus, it is not possible to ascertain which of the “plurality of image
19 icons” is the claimed “said image icon.”
- 20 04. Claim 23 contains the phrase “storage of said particular patient record
21 information in said portable processing device” (Answer 3).
- 22 05. The Examiner rejected claim 23 as indefinite because the phrase
23 “portable processing device” was not clearly a storage device (Answer
24 3).

1 06. A person of ordinary skill in the art would have understood that a
2 “portable processing device” would contain a storage device.

3 07. The Appellant contends that the lexicographic definition of a patient
4 record index is provided in the Specification.

5 Specifically, page 9 lines 10-22 of the specification
6 recite, "as a new section of patient record data is
7 retrieved from a record repository, a name of that section
8 (e.g. Chemistry) is identified and stored in a memory
9 buffer as an HTML hyperlink tag pointing to the report
10 section it references". The server application derives
11 content index information from collated patient record
12 information by parsing the patient record information or
13 by parsing ancillary data associated with the patient
14 record information. This is done in order to identify
15 distinct patient record information sections for listing in a
16 content index page as URL links to patient record
17 sections. The ancillary data comprises, for example,
18 header data of the patient record information, descriptive
19 data in a data field of acquired patient record
20 information, identification data in a data field of acquired
21 patient record information, and text data derived by
22 parsing content of acquired patient record information".

23 (Reply Br. 9).

24 08. The portion of the specification that the Appellant are referring to
25 states:

26 An advantage of the disclosed system is the ease of
27 locating information in a patient record. This is
28 facilitated by the dynamic generation by controller 15 in
29 step 420 of a patient record content index. It is a
30 hyperlinked content index to each of the major sections
31 of a patient chart such as Chemistry, Hematology, Vital
32 Signs etc. as exemplified in elements 911-929 of Figure
33 11. The patient record content index is created
34 dynamically by a remote application running on a server

1 as the patient record information is generated and
2 communicated to processing device 10. As the server
3 application collates individual sections of a patient record
4 for communication to processing device 10, it also
5 creates individual URL links to corresponding record
6 sections for use in a patient record content index.
7 Specifically, as a new section of patient record data is
8 retrieved from a record repository, a name of that section
9 (e.g. Chemistry) is identified and stored in a memory
10 buffer as an HTML hyperlink tag pointing to the report
11 section it references

12 (Specification 9).

- 13 09. The only clearly definitional portion of this extract from the
14 Specification is the phrase, "It is a hyperlinked content index to each
15 of the major sections of a patient chart ..." The remainder of this
16 extract from the Specification characterizes a patient record content
17 index as referred to in the Specification, but is not clearly
18 lexicographic in nature, and may be no more than a characterization of
19 an embodiment.
- 20 10. Thus, a patient record content index is "a hyperlinked content index to
21 each of the major sections of a patient chart" (Specification 9).
- 22 11. Evans shows an index hyperlinked by iconic tabs to each of the major
23 sections of a patient chart (Evans, Fig. 5).
- 24 12. Thus, Evans shows a patient record content index.
- 25 13. A particular patient of Evans has its data acquired by processing
26 information comprising an existing particular patient record in
27 response to a user command from the patient selection (Evans, Fig. 3).

- 1 14. Evans's patient record index data is dynamically derived by virtue of
2 it being built up from pointers, which are dynamic data structures, to
3 the various contents subject to the index (Evans, col. 8, ll. 18-60).
- 4 15. Thus, Evans shows acquiring data representing a patient record
5 content index, said content index representative acquired data being
6 dynamically derived, by processing information comprising an
7 existing particular patient record, in response to a user command from
8 said portable processing device to access said particular patient
9 record.
- 10 16. Evans shows its information is processed in any of a variety of
11 desktop and portable computers, within each of which the application
12 resides (Evans, Fig. 24).
- 13 17. Thus, Evans shows processing of said information comprising said
14 existing particular patient record is performed by one of, (a) an
15 application located in a remote device and (b) an application in said
16 portable processing device.
- 17 18. Claim 5 recites the limitation of "a plurality of links to a
18 corresponding plurality of lists of patients." This limitation requires
19 that there actually be multiple lists of patients, not just multiple
20 patients in a single list, or that a single list is portrayed at different
21 points so as to appear to be multiple lists. The Examiner contends that
22 Evans shows a plurality of links to a corresponding plurality of lists of
23 patients in Evans, Figs. 5-8 and 19-22 and col. 5, l. 56 through col. 6,
24 l. 54 (Answer 5, 22).

1 19. The portions of Evans pointed to by the Examiner show a single list of
2 patients, having a plurality of links to the patients in that single list,
3 but not a plurality of links to a corresponding plurality of lists of
4 patients.

5 20. Thus, we cannot find substantial evidence that Evans shows initiating
6 display of an image including a plurality of links to a corresponding
7 plurality of lists of patients, and wherein said step of initiating display
8 of an image including a plurality of links to a corresponding plurality
9 of individual patients is performed in response to user selection of one
10 of said plurality of links to a corresponding plurality of lists of
11 patients.

12 21. The Examiner contends that Evans shows initiating a display of a
13 reference range for a medical parameter and a unit of measure for that
14 medical parameter in response to user selection of that medical
15 parameter label at Evans Fig. 7 and col. 7, ll. 6-19; 52-64, col. 8, ll. 5-
16 8, and col. 11, ll. 19-22 (Answer 6-7 and 22-23).

17 22. The sections cited by the Examiner show initiating a display of a
18 reference range for a medical parameter and a unit of measure for that
19 medical parameter in response to a user selection, but that user
20 selection is that of a patient index tab, not of one of the medical
21 parameter labels that are associated with the reference range and unit
22 of measure that are shown (Evans, Fig. 7).

23 23. Thus, we cannot find substantial evidence that Evans shows initiating
24 display of at least one of (a) a reference range for said medical

1 parameter and (b) a unit of measure for said medical parameter in
2 response to user selection of said medical parameter label.

3 24. Excel has a feature for allowing the leftmost columns, typically the
4 row headings, to remain visible as the contents of a chart are scrolled
5 horizontally, so as to keep the row headings in view as the data
6 changes (Excel).

7 25. Excel is a notoriously old and well known mechanism for presenting
8 charts, and the visual techniques Excel uses to enhance visual display
9 of charts are generally known and used by those of ordinary skill in
10 the data presentation arts.

11 26. Evans's device is a data presentation device that has row headings and
12 a scroll bar, (Evans, Figs. 5-8).

13 27. Thus, a person of ordinary skill in the art upon seeing Evans's tabular
14 layout with row headings would have known of and found it obvious
15 to employ the notoriously well known data presentation technique of
16 retaining presentation of the row headings while horizontally scrolling
17 data to achieve the known benefit of retaining visual contact with
18 those headings while scrolling.

19 28. Blewett shows deriving content index information from record
20 information by parsing record information ancillary data to identify
21 distinct record information sections (Blewett, col. 2, ll. 53-59). In this
22 portion, Blewett describes parsing ancillary HTML file record
23 information to identify distinct HTML fields which are HTML
24 distinct record information sections.

1 29. Blewett provides a mechanism for reading arbitrarily formatted data,
2 for which Evans suggests a need in order to perform its appropriate
3 conversion routines (Evans, col. 10, ll. 31-35).

4 30. Thus, a person of ordinary skill in the art would have applied
5 Blewett's parsing mechanism for interpreting record data to Evans's
6 patient index data to derive content index information from patient
7 record information by parsing patient record information ancillary
8 data to identify distinct patient record information sections.

9 31. Blewett shows said ancillary data comprises at least one of, (a) header
10 data of said acquired record information, (b) descriptive data in a data
11 field of said acquired record information, (c) identification data in a
12 data field of said acquired record information, and (d) text data
13 derived by parsing content of said patient record information (Blewett,
14 col. 2, ll. 53-59). Blewett describes its ancillary data as title data and
15 body data, title tags and body tags. Title data are header data. Body
16 and title data are descriptive data. Title data are identification data.
17 Title and body data are textual data in HTML.

18 32. A person of ordinary skill in the art applying the parsing techniques
19 of Blewett to Evans's patient data would have thereby used the
20 resulting data in all of the patient's data including the patient index
21 data so as to build up all of Evans's data.

22 33. Thus, the combination of Evans and Blewett shows or suggests said
23 ancillary data comprises at least one of, (a) header data of said
24 acquired patient record information, (b) descriptive data in a data field
25 of said acquired patient record information, (c) identification data in a

1 data field of said acquired patient record information, and (d) text data
2 derived by parsing content of said acquired patient record information.

3 34. Evans shows dynamically generating a patient record content index by
4 deriving content information from ancillary data associated with said
5 acquired patient record information in response to a user command
6 from said portable processing device to access said particular patient
7 record (Evans, Fig. 5, which is a patient index that is created after
8 selection of a patient from Evans, Fig. 3, and Evans, col. 8, ll. 19-60,
9 describing creation of pointers, which are dynamically created data
10 structures, in the index).

11 35. Evans shows said user command from said portable processing device
12 to access said particular patient record comprises user selection of a
13 link to a particular patient (Evans, Fig. 5, which is a patient index that
14 is created after selection of a patient from Evans, Fig. 3, and Evans,
15 col. 8, ll. 19-60, describing creation of pointers, which are
16 dynamically created data structures, in the index).

17 36. Blewett shows deriving content index information from information in
18 an existing record by parsing record information ancillary data to
19 identify distinct record information sections in response to a user
20 command from a portable processing device to access said particular
21 record (Blewett, col. 2, ll. 53-59).

22 37. A person of ordinary skill in the art applying the parsing techniques
23 of Blewett to Evans's patient data would have thereby derived the
24 content index information from information in an existing record by
25 parsing record information ancillary data to identify distinct record

1 information sections in response to a user command from a portable
2 processing device to access said particular record.

3 38. Evans shows the top level of the patient record content index, being a
4 list of patients that are linked to individual patients, and the display
5 contains a Select icon, which is a link to initiate display of medical
6 information for a next patient (Evans, Fig. 3). An all-in-one version
7 of the links to the next patient and the current patient index data is
8 also shown (Evans, Fig. 21).

9 39. Thus, Evans shows initiating display of said patient record content
10 index image including a plurality of links to a corresponding plurality
11 of items of patient record information and a plurality of image icons
12 for display in a plurality of images, said image icons supporting at
13 least one of (a) initiating display of said image including links to a
14 plurality of lists of patients, (b) initiating display of said image
15 including a plurality of links to a corresponding plurality of individual
16 patients, and (c) initiating display of medical record information for a
17 next patient.

18 40. Evans shows cache into which data may be downloaded (Evans col. 9,
19 ll. 15-37). A cache is commonly used for offline access of
20 information (e.g., content of Web pages).

21 41. Thus, Evans shows or suggests said item of said patient medical
22 record information is available for access on said portable processing
23 device when said portable processing device is offline.

- 1 42. Evans shows initiating display of specific data after selection of a link
2 to that data (Evans, Figs. 5-7: References 151-154, and col. 6, l. 37 –
3 col. 7, l. 40 describing those figures).
- 4 43. Thus, Evans shows initiating display of an image including
5 information comprising an item of patient medical information in
6 response to user selection of a link to one of said plurality of items of
7 patient medical record information.
- 8 44. Bessette shows an implementation technique for storing patient record
9 data links as URL addresses in HTML documents (Bessette, col. 13,
10 ll. 23-38).
- 11 45. Bessette's documents contain patient data and thus their HTML titles
12 relate to the medical parameters that describe that data.
- 13 46. Evans shows that the workstations processing such data may be
14 portable processing devices (Evans, Fig. 24, e.g., pen computers 420).
- 15 47. Thus, Bessette and Evans, when combined, suggest a medical
16 parameter label that is a URL link stored in said portable processing
17 device.
- 18 48. Evans shows at least one of (a) a reference range for said medical
19 parameter and (b) a unit of measure for said medical parameter, is
20 acquired and displayed using a link (Evans, Figs. 5-7:References 151-
21 154, and col. 6, l. 37 – col. 7, l. 40 describing those figures).
- 22 49. Bessette shows that such links may be implemented as URL addresses
23 in HTML documents (Bessette, col. 13, ll. 23-38).

1 50. Thus, Evans and Bessette, when combined, suggest said at least one
2 of, (a) a reference range for said medical parameter and (b) a unit of
3 measure for said medical parameter, is acquired and displayed using
4 said medical parameter label URL.

5 51. Thus, the combination of Evans, Blewett, and Bessette suggests said
6 communicated patient record information includes a medical
7 parameter and including the activity of communicating to said
8 portable processing device at least one of (a) a reference range for said
9 medical parameter and (b) a unit of measure for said medical
10 parameter in response to receiving a message addressed to a URL
11 associated with a medical parameter label.

12 52. Evans shows acquiring data representing a portion of a patient record
13 in response to user selection of a patient link (Fig. 3 and 5).

14 53. Thus, Evans shows acquiring data representing said portion of said
15 patient record in response to user selection of said link.

16 54. Evans shows said portion of said patient record is available for access
17 on said portable processing device when said portable processing
18 device is offline (FF 40, 41).

19 55. Evans shows information for a patient whose data has been
20 downloaded into its portable processing device (see FF 40). Evans
21 shows processing such information to acquire a patient record content
22 index (see FF 15).

23 56. Thus, Evans shows processing information comprising an existing
24 particular patient record that is performed in response to download of

1 particular patient record information to said portable processing
2 device and storage of said particular patient record information in said
3 portable processing device.

4 57. Evans shows acquiring patient data representing links to the items of
5 patient record information and storing them (Evans, Figs. 12-14) in its
6 device, which may be portable (Evans, Fig. 24).

7 58. Thus, Evans shows acquiring data representing said plurality of links
8 to said corresponding plurality of items of patient record information
9 and storing said data representing said plurality of links in said
10 portable processing device.

11
12 PRINCIPLES OF LAW

13 The general rule is that terms in the claim are to be given their ordinary and
14 accustomed meaning. *Johnson Worldwide Assocs. v. Zebco Corp.*, 175 F.3d 985,
15 989, 50 USPQ2d 1607, 1610 (Fed. Cir. 1999). In the USPTO, claims are
16 construed giving their broadest reasonable interpretation.

17 [T]he Board is required to use a different standard for construing
18 claims than that used by district courts. We have held that it is error
19 for the Board to “appl[y] the mode of claim interpretation that is used
20 by courts in litigation, when interpreting the claims of issued patents
21 in connection with determinations of infringement and validity.” *In re*
22 *Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989); *accord In re Morris*, 127
23 F.3d 1048, 1054 (Fed. Cir. 1997) (“It would be inconsistent with the
24 role assigned to the PTO in issuing a patent to require it to interpret
25 claims in the same manner as judges who, post-issuance, operate
26 under the assumption the patent is valid.”). Instead, as we explained
27 above, the PTO is obligated to give claims their broadest reasonable
28 interpretation during examination.

1 *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364, 70 USPQ2d 1827, 1834
2 (Fed. Cir. 2004).

3 Although a patent applicant is entitled to be his own lexicographer of patent
4 claim terms, in *ex parte* prosecution it must be within limits. *In re Corr*, 347 F.2d
5 578, 146 USPQ 69 (CCPA, 1965). The applicant must do so by placing such
6 definitions in the Specification with sufficient clarity to provide a person of
7 ordinary skill in the art with clear and precise notice of the meaning that is to be
8 construed.

9 Although an inventor is indeed free to define the specific terms used
10 to describe his or her invention, this must be done with reasonable
11 clarity, deliberateness, and precision. "Where an inventor chooses to
12 be his own lexicographer and to give terms uncommon meanings, he
13 must set out his uncommon definition in some manner within the
14 patent disclosure" so as to give one of ordinary skill in the art notice
15 of the change. (Citation omitted).

16 *In re Paulsen*, 30 F.3d 1475, 1480 31 USPQ 2d 1671, 1674 (Fed. Cir. 1994).

17 Prior art must be enabling in rejections under 35 U.S.C. §§ 102 and 103, but
18 the standard of enablement is not that of 35 U.S.C. § 112.

19 A patent claim "cannot be anticipated by a prior art reference if
20 the allegedly anticipatory disclosures cited as prior art are not
21 enabled." *Elan Pharm., Inc. v. Mayo Found. for Med. Educ. &*
22 *Research*, 346 F.3d 1051, 1054 (Fed. Cir. 2003). The standard for
23 what constitutes proper enablement of a prior art reference for
24 purposes of anticipation under section 102, however, differs from the
25 enablement standard under section 112. In *In re Hafner*, 410 F.2d
26 1403 (CCPA 1969), the court stated that "a disclosure lacking a
27 teaching of how to use a fully disclosed compound for a specific,
28 substantial utility or of how to use for such purpose a compound
29 produced by a fully disclosed process is, under the present state of the
30 law, entirely adequate to anticipate a claim to either the product or the
31 process and, at the same time, entirely inadequate to support the

1 allowance of such a claim.” *Id.* at 1405; *see Schoenwald*, 964 F.2d at
2 1124; *In re Samour*, 571 F.2d 559, 563-64 (CCPA 1978). The reason
3 is that section 112 “provides that the specification must enable one
4 skilled in the art to ‘use’ the invention whereas [section] 102 makes
5 no such requirement as to an anticipatory disclosure.” (Citations
6 omitted).

7 *Rasmusson v. Smithkline Beecham Corp.*, 413 F.3d 1318, 1325, 75 USPQ2d 1297,
8 1302 (Fed. Cir. 2000).

9 A claimed invention is unpatentable if the differences between it and the prior
10 art are “such that the subject matter as a whole would have been obvious at the
11 time the invention was made to a person having ordinary skill in the art.” 35 U.S.C.
12 § 103(a) (2000); *In re Kahn*, 441 F.3d 977, 985, 78 USPQ2d 1329, 1334 (Fed. Cir.
13 2006) (citing *Graham v. John Deere Co.*, 383 U.S. 1, 13-14 (1966)). In *Graham*,
14 the Court held that that the obviousness analysis begins with several basic factual
15 inquiries: “[(1)] the scope and content of the prior art are to be determined; [(2)]
16 differences between the prior art and the claims at issue are to be ascertained; and
17 [(3)] the level of ordinary skill in the pertinent art resolved.” 383 U.S. at 17. After
18 ascertaining these facts, the obviousness of the invention is then determined
19 “against th[e] background” of the *Graham* factors. *Id.* at 17-18.

20
21
22 ANALYSIS

23 *Claims 6 and 23 rejected under 35 U.S.C. § 112, second paragraph, as failing to*
24 *particularly point out and distinctly claim the invention.*

25 From the above Findings of Fact we must conclude

- 1 • Not using the plural of “said image icon,” which absent the plural form lacks
2 antecedent basis, is indefinite (FF03) (Claim 6).
- 3 • The reference to a device as a data storage container is not indefinite
4 (FF06)(Claim 23).

5 Accordingly we sustain the Examiner's rejection of claim 6, but we do not
6 sustain the Examiner's rejection of claim 23 under 35 U.S.C. § 112, second
7 paragraph, as failing to particularly point out and distinctly claim the invention.

8
9 *Claims 1, 2, 5, 9, 13, 14, 16, and 18 rejected under 35 U.S.C. § 102(b) as*
10 *anticipated by Evans.*

11 From the above Findings of Fact, supported by a preponderance of substantial
12 evidence, we must conclude

- 13 • Evans shows acquiring data representing a patient record content index, said
14 content index representative acquired data being dynamically derived, by
15 processing information comprising an existing particular patient record, in
16 response to a user command from said portable processing device to access
17 said particular patient record (FF 15)(Claims 1, 8, 9, and 18).
- 18 • Evans shows said processing of said information comprising said existing
19 particular patient record is performed by one of, (a) an application located in
20 a remote device and (b) an application in said portable processing device
21 (FF17)(Claim 2).
- 22 • Evans fails to show initiating display of an image including a plurality of
23 links to a corresponding plurality of lists of patients, and wherein said step
24 of initiating display of an image including a plurality of links to a

1 corresponding plurality of individual patients is performed in response to
2 user selection one of said plurality of links to a corresponding plurality of
3 lists of patients (FF 20)(Claim 5).

- 4 • Evans fails to show initiating display of at least one of (a) a reference range
5 for said medical parameter and (b) a unit of measure for said medical
6 parameter in response to user selection of said medical parameter label (FF
7 23) (Claims 13, 14, and 16).

8 The Appellant contends that Evans does not show a patient record index that
9 matches its definition in the Specification (FF 07). Although the Appellant
10 correctly observes that the applicant is entitled to be his own lexicographer, during
11 examination only those lexicographic definitions that are set forth in the
12 specification with reasonable clarity, deliberateness, and precision are imposed on
13 claim terms. *See Paulsen*, 30 F.3d at 1480, 31 USPQ2d at 1674. The only
14 definition that meets these criteria is that a patient record content index is a
15 hyperlinked content index to each of the major sections of a patient chart (FF 10).
16 The Appellant contends, across most of the claims, that the prior art does not
17 provide a 35 U.S.C. § 112 compliant enabling disclosure (e.g., Br. 15). Although
18 prior art must enable a person of ordinary skill in the art to practice its teachings, it
19 does not require a 35 U.S.C. § 112 compliant level of enablement. *See Rasmusson*,
20 413 F.3d at 1325, 75 USPQ2d at 1302.

21 The Appellant also argues that Evans's patient record index is not dynamically
22 created (Br. 16-17). Evidently, the Appellant has a more narrow construction of
23 the word "dynamically" in mind than that of ordinary use to a person of ordinary
24 skill in the art. The Appellant has provided no lexicographic definition for this

1 term. Certainly the pointers of Evans are dynamic data structures and are
2 dynamically created and are sufficient to meet this claim limitation (FF 14).

3 Thus, the Examiner has not erred in the rejection of claims 1, 2, 9, and 18. As
4 we indicated above, we cannot find substantial evidence to support the Examiner's
5 rejection of claims 5, 13, and the claims that depend from 13. Accordingly we
6 sustain the Examiner's rejection of claims 1, 2, 9, and 18 under 35 U.S.C. § 102(b)
7 as anticipated by Evans, but we do not sustain the rejection of claims 5, 13, 14, or
8 16.

9
10 *Claims 7 and 8 rejected under 35 U.S.C. § 102(b) as anticipated by Evans, or, in*
11 *the alternative, under 35 U.S.C. § 103(a) as obvious over Evans and Excel.*

12 From the above Findings of Fact, supported by a preponderance of substantial
13 evidence, we must conclude

- 14 • The art applied suggests maintaining a row element stationary upon
15 horizontally scrolling an image screen display including other elements of
16 said row (FF 27) (Claims 7 and 8).

17 Accordingly we sustain the Examiner's rejection of claims 7 and 8 under 35
18 U.S.C. § 103(a) as obvious over Evans and Excel.

19
20 *Claims 3, 4, 10, 11, 19, and 21 rejected under 35 U.S.C. § 103(a) as obvious over*
21 *Evans and Blewett.*

22 From the above Findings of Fact, supported by a preponderance of substantial
23 evidence, we must conclude

- 1 • The art applied shows or suggests deriving content index information from
2 patient record information by parsing patient record information ancillary
3 data to identify distinct patient record information sections (FF 30)(Claim 3).
- 4 • The art applied shows or suggests said ancillary data comprises at least one
5 of, (a) header data of said acquired patient record information,
6 (b) descriptive data in a data field of said acquired patient record
7 information, (c) identification data in a data field of said acquired patient
8 record information, and (d) text data derived by parsing content of said
9 acquired patient record information (FF 33)(Claim 4).
- 10 • The art applied shows or suggests dynamically generating a patient record
11 content index by deriving content information from ancillary data associated
12 with said acquired patient record information in response to a user command
13 from said portable processing device to access said particular patient record
14 (FF 34) (Claim 10).
- 15 • The art applied shows or suggests said user command from said portable
16 processing device to access said particular patient record comprises user
17 selection of a link to a particular patient (FF 35) (Claim 11).
- 18 • The art applied shows or suggests deriving content index information from
19 information in an existing patient record by parsing patient record
20 information ancillary data to identify distinct patient record information
21 sections in response to a user command from a portable processing device to
22 access said particular patient record (FF 37) (Claims 19 and 21).

23 Accordingly we sustain the Examiner's rejection of claims 3, 4, 10, 11, 19, and
24 21 under 35 U.S.C. § 103(a) as obvious over Evans and Blewett.

Claim 6 rejected under 35 U.S.C. § 103(a) as obvious over Evans and Myers.

From the above Findings of Fact, supported by a preponderance of substantial evidence, we must conclude

- The art applied shows or suggests initiating display of said patient record content index image including a plurality of links to a corresponding plurality of items of patient record information and a plurality of image icons for display in a plurality of images, said image icon supporting at least one of, (a) initiating display of said image including links to a plurality of lists of patients, (b) initiating display of said image including a plurality of links to a corresponding plurality of individual patients, and (c) initiating display of medical record information for a next patient (FF 39) (Claim 6).

Accordingly we sustain the Examiner's rejection of claim 6 under 35 U.S.C. § 103(a) as obvious over Evans and Myers.

Claim 12 rejected under 35 U.S.C. § 103(a) as obvious over over Evans and Blewett, or, in the alternative, over Evans, Blewett, and Explorer.

From the above Findings of Fact, supported by a preponderance of substantial evidence, we must conclude

- Evans shows or suggests said item of said patient medical record information is available for access on said portable processing device when said portable processing device is offline (FF 41) (Claim 12).

- Evans shows or suggests initiating display of an image including information comprising an item of patient medical information in response to user selection of a link to one of said plurality of items of patient medical record information (FF 43) (Claim 12).

The Appellant argues that Explorer may not be prior art. As the above Findings of Fact show, Evans and Blewett are sufficient substantial evidence to show these claim limitations. Therefore, the disclosure in Explorer is merely cumulative of the prior art. We address the prior art status of the Explorer reference, *infra*, in the Remarks section of this opinion. Accordingly we sustain the Examiner's rejection of claim 12 under 35 U.S.C. § 103(a) as obvious over Evans and Blewett.

Claim 15 rejected under 35 U.S.C. § 103(a) as obvious over Evans, Bessette, and Explorer.

From the above Findings of Fact, supported by a preponderance of substantial evidence, we must conclude that because the art applied does not show or suggest the subject matter of parent claim 13, and neither Bessette nor Explorer make up for this deficiency, the art applied does not show or suggest the subject matter of claim 15.

Accordingly we do not sustain the Examiner's rejection of claim 15 under 35 U.S.C. § 103(a) as obvious over Evans, Bessette and Explorer.

Claim 17 rejected under 35 U.S.C. § 103(a) as obvious over Evans and Huerga.

1 From the above Findings of Fact, supported by a preponderance of substantial
2 evidence, we must conclude that because the art applied does not show or suggest
3 the subject matter of parent claim 13, and Huerga does not make up for this
4 deficiency, the art applied does not show or suggest the subject matter of claim 17.

5 Accordingly we do not sustain the Examiner's rejection of claim 17 under 35
6 U.S.C. § 103(a) as obvious over Evans and Huerga.

7
8 *Claim 20 rejected under 35 U.S.C. § 103(a) as obvious over Evans, Blewett, and*
9 *Bessette.*

10 From the above Findings of Fact, supported by a preponderance of substantial
11 evidence, we must conclude

- 12 • The art applied shows or suggests said communicated patient record
13 information includes a medical parameter and including the activity of,
14 communicating to said portable processing device at least one of, (a) a
15 reference range for said medical parameter and (b) a unit of measure for said
16 medical parameter in response to receiving a message addressed to a URL
17 associated with a medical parameter label (FF 51) (Claim 20).

18 Accordingly we sustain the Examiner's rejection of claim 20 under 35 U.S.C.
19 § 103(a) as obvious over Evans, Blewett, and Bessette.

20
21 *Claims 22 and 23 rejected under 35 U.S.C. § 102(b) as anticipated by Evans, or, in*
22 *the alternative, under 35 U.S.C. § 103(a) as obvious over Evans and Explorer.*

1 From the above Findings of Fact, supported by a preponderance of substantial
2 evidence, we must conclude

- 3 ○ The art applied shows or suggests acquiring data representing said
4 portion of said patient record in response to user selection of said link
5 (FF 53) (Claim 22).
- 6 ○ The art applied shows or suggests said portion of said patient record is
7 available for access on said portable processing device when said
8 portable processing device is offline (FF 54) (Claims 22 and 23).
- 9 ○ The art applied shows or suggests processing information comprising
10 an existing particular patient record that is performed in response to
11 download of particular patient record information to said portable
12 processing device and storage of said particular patient record
13 information in said portable processing device (FF 56) (Claim 23).

14 Accordingly we sustain the examiner's rejection of claims 22 and 23 under 35
15 U.S.C. § 102(b) as anticipated by Evans.

16
17 *Claim 24 rejected under 35 U.S.C. § 103(a) as obvious over Evans and Explorer.*

18 From the above Findings of Fact, supported by a preponderance of substantial
19 evidence, we must conclude

- 20 • The art applied shows or suggests acquiring data representing said plurality
21 of links to said corresponding plurality of items of patient record information
22 and storing said data representing said plurality of links in said portable
23 processing device (FF 58)(Claim 24).

Accordingly we sustain the examiner's rejection of claim 24 under 35 U.S.C. § 103(a) as obvious over Evans and Explorer.⁴

REMARKS

We note that the Appellant has traversed the Examiner's official notice of the notoriety of the availability of Internet Explorer and its feature of downloading web data for offline retrieval as prior art (Br. 12-13). This traversal did not yet rise to the level of an issue affecting patentability. To facilitate further prosecution, should this issue rise to a level affecting patentability, we provide herewith evidence that this feature and its notoriety were publicly known and available at least as early as August 1999, twenty months prior to the earliest possible priority date of the instant application.

Should this application continue further in prosecution, we note that Huerga contains many of the same basic parsing teachings as Blewett, but in a context more closely aligned with the claimed subject matter than Blewett, and may therefore be more pertinent to issues that further arise.

⁴ Although the Examiner's rejection is based on the combined teachings of Evans and Explorer, we found sufficient evidence in Evans alone to suggest the subject matter of claim 24. As such, it is on this basis that we affirm the Examiner's rejection.

DECISION

To summarize, our decision is as follows:

- The rejection under 35 U.S.C. § 112, second paragraph, as failing to particularly point out and distinctly claim the invention, of claim 6 is sustained, but the rejection of claim 23 is not sustained.
- The rejection of claims 1, 2, 9, and 18 under 35 U.S.C. § 102(b) as anticipated by Evans is sustained, but the rejection of claims 5, 13, 14, and 16 is not sustained.
- The rejection of claims 7 and 8 under 35 U.S.C. § 103(a) as obvious over Evans and Excel is sustained.
- The rejection of claims 3, 4, 10, 11, 19, and 21 under 35 U.S.C. § 103(a) as obvious over Evans and Blewett is sustained.
- The rejection of claim 6 under 35 U.S.C. § 103(a) as obvious over Evans and Myers is sustained.
- The rejection of claim 12 under 35 U.S.C. § 103(a) as obvious over Evans and Blewett is sustained.
- The rejection of claim 15 under 35 U.S.C. § 103(a) as obvious over Evans, Bessette and Explorer is not sustained.
- The rejection of claim 17 under 35 U.S.C. § 103(a) as obvious over Evans and Huerga is not sustained.
- The rejection of claim 20 under 35 U.S.C. § 103(a) as obvious over Evans, Blewett, and Bessette is sustained.

- The rejection of claims 22 and 23 under 35 U.S.C. § 102(b) as anticipated by Evans is sustained.
- The rejection of claim 24 under 35 U.S.C. § 103(a) as obvious over Evans and Explorer is sustained.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

jlb

Elsa Keller, Legal Assistant
Intellectual Property Department
SIEMENS CORPORATION
186 Wood Avenue South
Iselin, NJ 08830